A Speech made in the Houſe of Commons the 26th day of *October* 1646. (upon the Reading of the Scotiſh Papers the ſame day, In Reply to the Votes of both Houſes of Parliament of the 24th. of Sept. concerning the diſpoſall of the Kings Perſon,) ſpoken by *Thomas Chaloner*, Eſquier, a Member of the ſaid Houſe.

Mr. SPEAKER,

You have juſt now heard two Papers Read before you from the Commiſſioners of *Scotland*, the firſt concerning the diſpoſall of the Kings Perſon, the other touching the diſtractions of the North, by reaſon (as they ſay) of the non-payment of their Army: I ſhall ſpeak nothing to the

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latter, becauſe it hath beene ſo ſufficiently anſwered by divers knowing Members of this Houſe. To the firſt I ſhall wholly apply my ſelfe, becauſe little or nothing hath beene ſaid to that point.

The queſtion then before you is, about the diſpoſeall of the Kings perſon, you ſay that, hee is to be diſpoſed of as both Houſes of Parliament ſhall think fitting, but your Brethren of *Scotland* ſay hee is to be diſpoſed of as both Kingdomes ſhall think fitting, And they Fortifie their affirmation with theſe reaſons.

They ſay that he is not only King of *England*, but alſo King of *Scotland*, and as you have an intereſt in him, hee being King of *England*, ſo have they no leſſe intereſt in him hee being KING of *Scotland*. And as they have not the ſole intereſt in him, hee being KING of Scotland, becauſe they acknowledge with all, that hee is King of *England*, ſo have not you the ſole intereſt in him, he being King of *England*, becauſe they deſire you to remember, that he is alſo King of *Scotland*: ſo as neither Nation having a ſole, but a joynt Intereſt in his perſon, they ought joyntly to diſpoſe of it for the weale and benefit of both Kingdomes:

This I take to bee the whole ſcope of their Argument which they have repreſented unto you under ſo many diſguiſes, and as it were by multiply-

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ing glaſſes, Inſomuch as the bare relating of it takes up three large ſheets of paper.

But while they debate this great queſtion with you, touching the diſpoſall of the Kings Perſon, and while they poſſitively affirme, that he is to be diſpoſed of by the joynt conſent of both Nations. Give me leave to remember you that in the meane time, they diſpoſe wholly of him themſelves, and ſo have done for theſe ſix months, and may for ſix months longer, for any thing I can gather out of theſe Papers.

Their Argument runs thus.

Whereſoever the Kingdome of Scotland *hath an Intereſt in there King, there they may diſpoſe of him.*
But the Kingdome of Scotland *hath an Intereſt in their King, he being in England.*
Therefore in England *they may diſpoſe of him.*

Sir, This may ſeeme at the firſt to ſome to be a faire and ſpecious Argument, but let it be well conſidered, it will prove erronious and Fallacious. For in the Major Propoſition they underſtand one thing by the word King, and in the minor Propoſition they underſtand another thing by the word King, and ſo here is a concluſion inferred,

which the premisses will not warrant.

For the cleering whereof, I pray Sir, remember that this word King is of a various signification, sometimes it is taken in *abstracto*, that is for the Royall power, Function, and office of a King, sometimes it is taken in *Concreto*, that is for the man or person whom we call King.

If their Major Proposition be taken in the first sense, we shall never deny it them, nay wee shall acknowledge that the King of *Scotland* being taken in *abstracto*, wee have nothing to doe with him at all, hee is solely and totally theirs; God forbid that a King of *Scotland* going out of his Kingdome, should either make *Scotland* cease to bee a Kingdome, or give any participation of interest to that Countrey where hee doth reside. Let his person reside in the furthest parts of the earth; yet the Royall Office and Capacity of the King resideth still in *Scotland*, They have his sword to do Iustice by, they have his Scepter to shew mercy by, they have his Seale to confirme what they please by: And they have his Lawes to Governe by; And in this sense it is only meant that the King is never under yeares, never dyes, cannot bee deceived, can neither do wrong, nor take wrong, of any body; And in this sense we fight for King and Parliament, though the person of the King bee in opposition to both, and in this sense the returnes and tests of the Kings Writs are, *Coram me ipso apud Westmonasterium*, and *teste me-*

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ipso apud Westmonasterium, let the Person of the King at the same time be in *France*, or the remotest Country of the world; but a *King* of *Scotland* taken in this sense is never out of *Scotland*, and therefore whereas they say in the minor Proposition. That the Kingdome of *Scotland*, hath an interest in their King, he being in *England*, this must needs be meant of a King in *Concreto*, that is onely of the person of their King, and not of his Royall Capacity, And in this sense we must deny that they have any thing at all to doe with him. For though the Royall Office of the King of *Scotland* is solely to bee disposed of by the State of *Scotland*: Yet it is not so with his Person. For *Persona sequitur locum*; and his person must be disposed of by the supreame power of that Country wheresoever he shall happen to abide. Suppose a King of *Scotland* should bee in *Spaine*, will they say, they have as great an interest to dispose of his Person there as in *Scotland*, I thinke they will not say so: and yet they did affirme last day at the Conference, that they had as good right to dispose of his person at Westminster, as they had at *Edenburgh*. But under their favour *England* is as distinct a Kingdome from *Scotland* as *Spaine*: It is as distinct in Lawes, distinct in Priviledges, distinct in interest, it is neither subordinate, nor dependent of *Scotland*, and they can no more dispose of a King of *Scotlands* person, he being in *England*, then if he were in *Spaine*.

I shall take this as granted for good Law, that let the person of any Nation under the sun, which is in amity with *England*, happen to come into *England*, that person is forthwith a subject of *ENGLAND*

For hee being protected by the Lawes of *England*, hee becomes thereby subject to those Lawes, it being most certaine that *Protectio trahit subjectionem, & subjectio protectionem*, they being relatives, the one cannot stand without the other, and as no man can be said to be a father that hath no son, nor no man a husband, that hath no wife, so no man can bee said to bee protected, that is not withall thereby subjected. And since without such protection every man may kill him, and destroy him. It seemes to stand with no proportion of Justice, that a man should bee protected in Life, Limbe, or estate by any law that will not subject himselfe to that Law.

It cannot bee denyed, but that there is a twofold subjection legall, and locall, the legall subjection is due from every subject to his naturall Prince, the locall from any Forreigner to that Prince or State where his person doth reside. And this, though it be onely *pro tempore*, and the other, during life: Yet it doth for the time totally obstruct the operation of the other subjection; So that

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no King can command any ſubject of his, living out of his Kingdome, but ſuch ſubject of his, is to bee diſpoſed of, by the ſole Authority of that ſupreame power, where hee makes his Reſidence: And ſince the queſtion is onely about the perſon of a King of *Scotland*, for I conceive they will not take upon them any Authority to diſpoſe of the Perſon of a King of *England*, I doe affirme that if a King of *Scotland* ſhould have come into ENGLAND, before the Union of both theſe Kingdomes, hee had beene inſtantly a ſubject of England and his perſon to bee diſpoſed of by the ſole Authority of the Lawes of England.

For either wee muſt take him as a King or a Subject, ſince betwixt them two there is no medium, as a King wee cannot take him, unleſſe wee ſhould commit Treaſon againſt our naturall Prince, and ſubject our ſelves to any but to him, it being moſt certaine, that there is the ſame relation betwixt the King and his Subjects, as betwixt the husband

husband and his wife, and as no man can be ſaid to be a husband but to his own Wife; So no man can be ſaid to be a King but to his owne ſubjects, and therefore we cannot admit of any Regality in the perſon of a King of *Scotland* comming into *England*, unleſſe at the ſame time, to the ſame perſon we ſhould confeſſe ſubjection. For that it is moſt true, that as none can be ſaid to be *Rex ſine Regno*, ſo no man can be ſaid to bee *Rex* but in *Regno*: Therefore if a King of *Scotland* comming as afore ſaid into *England*, if againſt the *Lawes* of England hee doe offend, by thoſe Laws of *England* he muſt be tryed, and by none other, For *ubi quis delinquit, ibi puniatur*, And it is moſt ſure, that we have diſpoſed of the perſons of Kings of *Scotland* comming into *England* both living and dead. And if wee may diſpoſe of the perſon of a King of *Scotland* without the conſent of the Kingdome of SCOTLAND, much more may wee diſpoſe of the perſon of a King of ENGLAND, hee being now

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in England without their privity or advice. But if they have any power to dispose of him, it is because they are either our Masters or our Fellows: if they be our Masters, let them shew the time when they conquerd us, or the price for which we were sold unto them: If they be our Fellows, why come they not to our Parliaments, why contribute they not to our necessities? But as it is apparent that they being two distinct Kingdomes, governed by two distinct Lawes: so they ought not to intermeddle one with anothers interest; but to content themselves with what doth naturally appertaine to each of them severally.

There is no doubt to be made, but that every Husband hath as great an interest in the person of his wife, as any Subject hath in the person of his Soveraigne; and yet a man may lose that interest by some act of his Wives, as if she commit Felony, Murder, or Treason, the Law disposeth of her person, and her husband cannot claime any right, so much as to her dead body: so fareth it with a King, who by going out of his Kingdome, or by being taken prisoner by his enemies, his Subjects lose the interest they had in him, and he is at the disposall of his enemies *Jure belli*. *John* King of England was cited to appeare at Paris to answer for the death of *Arthur Plantagenet* Duke of Britaine whom hee had murthered; the State of England would not let him goe, as holding it a great indignity and incongruity that a King of England should answer for

any thing at Paris right or wrong; The French answered that they cited him not as King of England, but as Duke of Normandy; as King of England they acknowledged to have nothing to doe with him, he was in that respect without them and beyond them; but as Duke of Normandy which he held in fee of the Crown of France, he owed fealty and allegiance for the same to the Crowne of France, and therefore ought to answer. The English replied, that if the Duke of Normandy did goe, the King of England must goe; and if the Duke of Normandy were beheaded, they knew well enough what would become of the King of England; Upon large debate hereof by all the Lawyers in France it was resolved that if *John* had been in Normandy at the time of his summons, he ought to have appeared; but he being *Extra jurisdictionem Regni Franciæ* at the time of his summons, and *infra jurisdictionem Regni Angliæ*, though legally he were a subject of France, yet locally he being in England, his summons was voyd, and hee forfeited nothing by his non-appearance.

I will onely urge one argument more deduced from a knowne maxime of the Law, not of England but of Scotland also, which the Commissioners of Scotland the other day at the Conference did cite themselves, in my opinion much against themselves, and that is this, *Quando Duo Jura, imo Duo Regna* (sayth a great Lawyer) *con-*

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currant in una persona, æquum est ac si essent in diversis, which is no more then this, when two kingdomes held by two distinct Titles doe concur in one and the same person, it is all one as if they were in two distinct persons. I suppose here is our very case, here are two kingdomes, England and Scotland, held by two distinct Titles, which doe both concur in one Person, in the person of King CHARLES; it is all one sayth this rule and maxime of the Law, as if they were under two severall persons; why then put the case, that there were one King of England and another of Scotland, should the State of Scotland have any thing to doe to dispose of the person of a King of England, he being in England? I thinke you will say they could not.

Sir, I am sorry that our brethren have moved this question at this time; for all questions make debates, and debates differences; and this were a time for brothers to reconcile differences rather then to make them; we have now lived 44 yeeres, both under two Princes, and in all this time this question was never stirred in, till now; had it been stirred in, no question but it had been rejected. The people of England would have held it very strange that they could not have disposed of the person of their owne King, or that a King of England could not have gone from Whitehall to Richmond or Hampton-court with-

out the will and appointment of the Councell of Scotland: they would have thought they had made an evill bargaine by such a union. For before the union they might have disposed of the person of their Prince; but after, not. And since they conceived that by the addition of Scotland there was an addition of charge, they would have been very sorry withall to have had an addition of servility.

Since the beginning of the World there was never before such a contention about the person of a King. The Greekes and Trojans did contend for a long time in fight about the dead body of *Partroclus* which of them should have it. But here is not a contention about the dead body of a private man, but about the living body of a King; neither doe we contend as they did, who should have his person, but here you do contend (as farre as I conceive) who should not have it. Your brethren of Scotland say positively they will not have the Kings person upon any conditions whatsoever. It is now above six moneths past that you voted in this House the demanding of the Kings person, but the Lords refused to joyne with ye; ever since untill this present you your selfe did Acquiesce as if you had repented of your former vote; Now he must be put upon you, and with such termes as his present Gardians please to allow of.

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Truly it seemes strange to me, that an Army of Scots in pay of the kingdome of England, which by the Treaty ought to be governed by the joynt consent of the Committees of both kingdomes upon the place, should in England take a King of England without the privity of the English Committee, and convey him to Newcastle a Towne likewise of England, and should there keepe him for six whole moneths without the consent of both Houses of Parliament. And when they finde it not convenient for them to keepe him any longer, then they will capitulate with you upon what conditions you must receive his person.

I never thought to have found a King of England his person being in England, under any other protection but that of the Lawes of England; but now I finde him under the protection of a Scottish Army, whether they say hee is fled for shelter, and that they cannot render him up in Honour.

Sir, if that Army of theirs be come into this kingdome as brethren, friends, and confederates (as we hope they are) then is every person of that Army during the time of his stay here locally a subject of England, and such children as are borne to them here are not Aliens but Denisons, and not onely locall but legall Subjects of this kingdome. And therefore they having gotten

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the King into their hands, they ought no more to capitulate upon what terms he ſhould be delivered into yours, then if the Army of Sir *Thomas Fairfax* were in poſſeſſion thereof, who if they ſhould deny the ſurrendring of the King unto you, but upon condition, no queſtion but it were capitall.

They ſay, that by vertue of the Covenant they are obliged to defend his Perſon and Authority. What his Authority is in Scotland themſelves beſt know; but you onely are to judge of it in England, ſince being not ſubordinate to any power on Earth, there is no power under Heaven can judge you. The Covenant ties you to maintaine in the firſt place the Rights of Parliament, and the liberties of the Kingdome; and in the ſecond place the Kings Perſon and Authority; and that onely in defence of the former, and not otherwiſe. And whereas they expect the King ſhould be received by you with Honour, ſafety, and freedome, I beſeech you, Sir, conſider whether (as the caſe now ſtands) his Reception with Honour can ſtand with the Honour of the Kingdome, whether his ſafety be not incompatible with the ſafety of the Commonwealth, and whether his freedome be not inconſiſtent with the freedome of the people.

I pray (Sir) take heed leaſt that bringing him in with Honour you doe not diſhonour your ſelfe,

ſelfe, and queſtion the very juſtice of all your Actions; be wary that in receiving him with ſafety you doe not thereby endanger and hazard the Common-wealth; be adviſed leaſt in bringing him home with freedome, you doe not thereby lead the people of England in thraldome.

I pray (Sir) firſt ſettle the honour, ſafety and freedome of the Common-wealth, and then the honour, ſafety, and freedome of the King, ſo far as the latter may ſtand with the former, and not otherwiſe

Wherefore I ſhall conclude with my humble deſire that you would adhere to your former vote that is, that the King be diſpoſed of as both Houſes of Parliament ſhall thinke fitting; and that you enter into no Treaty either with the King or your brethren of Scotland, leaſt otherwiſe thereby you retard the going home of their Army out of England.

FINIS.